

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 6742 of 2001 (S/S)
(Old No. 12121 of 1995)

Smt. Anjana Devi Mittal Petitioner

Versus

Oil & Natural Gas Corporation Ltd.
..... Respondent

Date of decision: 26th August, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

Whether the order/judgment should be sent to
the reporters for reporting?

Whether the reporters be allowed to see the
judgment?

(Himanshu)
P.A.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

**CIVIL MISC. WRIT PETITION NO. 6742 (S/S) OF 2001
(OLD NO. 12121/1995)**

Smt. Anjana Devi Mittal.

.....Petitioner.

Versus

**Oil & Natural Gas Corporation Ltd.
and others.**

.....Respondents.

Mr. Sunil Kumar Jain/V.K. Goel, learned counsel for the petitioner.

Mr. L.P. Naithani, learned Senior counsel a/b Sri J.P. Joshi, learned counsel for the respondents

Hon'ble Prafulla C. Pant, J

1. By means of this writ petition the petitioner has sought quashing of the order dated 1st July 1994 passed by the General Manager (Administration) ONGC Ltd. whereby the petitioner's services have been terminated, and also a mandamus has been sought for her continuance in service.

2. Brief facts of the case as per the petition are that Oil & Natural Gas Corporation Ltd. is a registered company vide Registration No. 55-54155 of 1993-94 with Registrar of Companies, Delhi. Prior to coming into force of Oil & Natural Gas Commission (Transfer of Undertaking) Act 1993, the earlier organization Oil & Natural Gas Commission, framed regulation governed in terms and conditions of appointment of service of its employees. In response to invitation of Oil & Natural Gas Commission in the year 1982, the petitioner got sent her application through employment exchange for a post of Assistant Grade-III in the aforesaid organization. She was selected and was appointed on said post vide letter dated 12.5.1983 (copy annexure '1' to the writ petition). She joined her duties on 13th May 1983 and completed successfully her period of probation of one year. Vide letter-dated 6.1.1990 the petitioner was promoted from the post of Assistant Grade-III to Assistant Grade-II (copy annexure-2 to the writ petition). In the year 1990 the petitioner had medical problems and have to seek leaves which were sanctioned to

her in the year 1990, 1991, 1992 and 1993 by the competent authorities on the basis of medical certificates submitted by her. In the month of December 1992 the Group General Manager directed the petitioner to appear before the Medical Board in which there was only one Surgeon namely Mrs. Anjana sen and the rest were physicians. Report of the Medical Board was not given to the petitioner and she could not file any appeal against report dated 11.12.1992 of the Medical Board. On 31.12.1993 after joining her duties she again proceeded on leave for a period of 3.1.1994 to 25.2.1994 but vide letter-dated 23.2.1994 she was informed that her applications dated 27.12.1993, 31.12.1993, 3.1.1994 and 12.1.1994 for leave have been rejected. The petitioner ultimately joined her duties on 28.2.1994 but she received a notice on 26.5.1994 (copy annexure 5 to the writ petition) signed by the General Manager (Administration) to show cause as to why her services be not terminated under Regulation 24 of the ONGC (Terms and Conditions of Appointment and Services) Regulations, 1975. In reply to which the petitioner submitted her response before 1st June 1994. Again vide letter-dated 20.6.1994 (copy annexure 8 to the writ petition) the Deputy Director of company issued a show cause notice to the petitioner informing the leaves applied were disproportionate to the ailment alleged by the petitioner. The petitioner replied the same on 24.6.1994. Finally vide order dated 1.7.1994 the General Manager of the company terminated the services of the petitioner under Regulation 24(1) of ONGC (Terms and Conditions of Appointment & Services) Regulation, 1975 (copy annexure 10 to the writ petition). The termination order has been challenged on the ground that the Group General Manager who granted promotion to the petitioner as Assistant Grade-II was higher in rank than the General Manager who passed the order of termination. The second ground on which the order has been challenged is that the impugned order dated 1.7.1994 terminating the services of the petitioner from the back date on 1.12.1993. It is alleged that no departmental inquiry were

initiated against the petitioner and she was not given sufficient opportunity to defend herself. The departmental appeal filed by the petitioner was also rejected vide letter dated 16/22.2.1995 (copy annexure 13 to the writ petition). The petition has challenged both the above orders dated 1.7.1994 and 16/22.2.1995 by moving this writ petition.

3. Counter affidavit has been filed on behalf of the respondents by the General Manager (P & A) of the company who admitted that the petitioner Smt. Anjana Devi Mittal was appointed vide letter dated 12.5.1983 in the post of Assistant Grade-III and joined her duties on 13.5.1983. Her promotion on the post of Assistant Grade-II is also not disputed. However, the rest of contents of the writ petition are not admitted by the respondents as stated in the petition. it is alleged that the appointment of the petitioner was temporary and her services were liable to be terminated at any time by giving her one month’s notice or one month’s salary in lieu there of. It is further alleged by the respondents that the petitioner abused her position and kept on seeking leaves frequently on one pretext or the other. The chart (copy annexure CA-2 to the counter affidavit) showing the leave record of the petitioner is reproduced below:-

LEAVE RECORD OF MRS. ANJANA MITTAL W.E.F. 13.05.83 TO 30.11.93.

Sl. No.	Leave		Number of days	Type of leave	Reasons/grounds	Remarks if any
	From	To				
1.	19.09.83	--	01	EL	Go to Amabala	
2.	21.09.83	22.09.83	01	EL	Urgent Work	
3.	03.10.83	--	01	EL	-do-	
4.	17.10.83	--	01	EL	Not feeling well	
5.	27.10.83	--	01	EL	-do-	
6.	05.11.83	--	01	EL	-do-	

7.	01.12.83	--	01	EL	Suffering from fever	
Total 11 days						
	09.04.84	10.04.84	02	EL	Suffering from fever	
	17.04.84	19.04.84	03	EL	Appeared for examination.	
	26.04.84	27.04.84	02	EL	--do--	
	30.06.84	03.07.84	04	Comm. Leave	Suffering from fever	Medical certificate submitted
	12.07.84	--	01	EL	--do--	
	21.07.84	--	01	EL	Domestic work	
	20.07.84	31.07.84	02	EL	--do--	
	22.08.84	--	01	EL	Not feeling well	
	27.08.84	28.08.84	02	Comm. Leave	--do--	Medical certificate submitted
	12.09.84	--	01	EL	--do--	
	24.09.84	--	01	EL	Domestic work	
	16.10.84	--	01	EL	--do--	
	25.10.84	26.10.84	02	Comm. Leave	Not feeling well	
	15.11.84	--	01	EL	--do--	
	07.12.84	--	01	EL	--do--	
	18.12.84	--	01	EL	--do--	
	26.12.84	27.12.84	02	Comm. Leave	--do--	
Total 28 days						
	01.02.85	--	01	EL	Domestic work	
	12.02.85	13.02.85	02	EL	Not feeling well	
	26.02.85	27.02.85	02	EL	--do--	
	08.04.85	09.04.85	02	EL	Domestic work	
	08.05.85		01	EL	--do--	
	20.05.85	24.05.85	05	HPL	Attend marriage ceremony	
	12.06.85	--	01	EL	Not feeling well	
	12.08.85	--	01	EL	--do--	
	16.09.85	17.09.85	02	HPL	--do--	
	01.10.85	05.10.85	05	HPL	Go to Almora	
	31.10.85	--	01	HPL	Urgent work	
	07.11.85	08.11.85	02	HPL	Go to Almora	
	13.11.85	14.11.85	02	HPL	Work at home	
	11.12.85	--	01	HPL	Not feeling well	
	21.12.85	--	01	EL	--do--	
Total 29 days						
	02.01.86	--	01	EL	Urgent work	
	25.2.86	26.2.86	02	EL	Not feeling well	
	01.04.86	07.04.86	07	EL	--do--	
	10.04.86	18.04.86	09	EL	Sudden death of brother	
	25.04.86	07.05.86	13	EL	Appeared in B.A	

					Exams	
	15.05.86	--	01	EL	Not feeling well	
	21.05.86	22.05.86	02	EL	--do--	
	06.06.86	07.06.86	02	HPL	III health	
	17.06.86	18.06.86	02	HPL	Not feeling well	
	02.07.86	--	01	HPL	--do--	
	18.07.86	19.07.86	02	HPL	Urgent work	
	06.08.86	08.08.86	03	HPL	Not feeling well	
	19.08.86	20.08.86	02	HPL	Urgent work	
	26.08.86	--	01	HPL	Not feeling well	
	03.09.86	--	01	HPL	Urgent work	
	19.09.86	--	01	HPL	Not feeling well	
	08.09.86	--	01	HPL	Not feeling well	
	25.09.86	27.09.86	03	HPL	--do--	
	14.10.86	16.10.86	03	EL	--do--	
	29.10.86	--	01	EL	Urgent work	
	11.11.86	--	01	EL	--do--	
	17.11.86	--	01	EL	Not feeling well	
	21.11.86	--	01	HPL	--do--	
	25.11.86	26.11.86	02	EL	Urgent work	
	3.12.86	--	01	EL	--do--	
	16.12.86	--	01	EL	--do-	
	26.12.86	27.12.86	02	EL	--do--	
Total 67 days						
	12.02.87	27.02.87	16	EL	Self marriage	
	02.03.87	03.03.87	02	EL	Go to Merrut	
	04.03.87	04.04.87	32	EOL	Not feeling well	
	14.04.87	21.04.87	09	EOL	--do--	
	23.04.87	--	01	EOL	--do--	
	04.05.87	12.05.87	09	EOL	--do--	
	13.05.87	01.06.87	20	HPL	--do--	
	02.06.87	25.06.87	24	EOL	--do--	
	29.06.87	20.07.87	22	EOL	Go to Delhi	
	30.07.87	25.07.87	27	EOL	Not feeling well	
	26.08.87	02.09.87	08	EOL	--do--	
	07.09.87	31.10.87	55	EOL	--do--	
	10.11.87	19.02.88	102	EOL	--do--	
Total 319 days						
	20.02.88	19.05.88	90	Maternity leave		
	20.05.88	21.05.88	02	HPL	Urgent work	
	04.06.88	--	01	HPL	--do--	
	09.06.88	--	01	HPL	Baby not feeling well	
	10.06.88	05.07.88	26	Maternity leave		
	15.07.88	17.07.88	03	HPL	Daughter expired	
	18.07.88	17.09.88	82	EOL	On medical ground	Medical certificate submitted

	18.09.88	20.09.88	03	HPL	Unavoidable circumstances	
	26.09.88	--	01	HPL		
	27.09.88	06.12.88	71	EOL	Not felling well	M/C fitness/cer Submitted.
	19.12.88	27.12.88	09	HPL	Social obligation	
	28.12.88	27.12.89	62	EOL	Not feeling well	--do--
Total			331 days			
	11.04.89	05.07.89	86	EOL	Not feeling well	
	06.07.89	03.10.89	90	Maternity leave		
	19.10.89	20.10.89	02	EL	Daughter not feeling well	
	27.10.89	15.11.89	20	HPL	Go to Delhi.	
	16.11.89	24.11.89	09	EL	Domestic work	
	25.11.89	27.11.89	03	EOL	--do--	
			210			
	18.01.90	11.04.90	84	EOL	Not feeling well	MC/Fitness Submitted
	20.04.90	11.06.90	53	EOL	--do--	
	13.06.09	21.06.90	09	EOL	Go to Delhi	
	22.06.90	19.09.90	90	Maternity Leave		
			236 Days			
	20.09.90	24.01.91	136	EOL	On medical ground	--do--
	18.02.91	23.02.91	06	EL	Go to Delhi	
	13.03.91	15.03.91	03	HPL	Not feeling well	
	23.03.91	23.03.91	04	HPL	--do--	
	01.04.91	06.04.91	06	EOL	Medical ground	MC/fitness submitted
	18.04.91	26.04.91	09	EL	Go to Delhi	
	13.05.91	18.05.91	06	HPL	Not feeling well	
	29.05.91	23.05.91	87	EOL	On medical ground	--do--
	04.09.91	08.11.91	66	EOL	--do--	--do--
	17.12.91	19.12.91	03	HPL	Not feeling well	
Total			326 Days			
	02.01.92	03.01.92	02	HPL	Go to Delhi	
	04.01.92	05.02.92	33	EOL	Medical ground	
	06.02.92	30.03.92	54	EOL	--do--	
	16.04.92	--	01	HPL	--do--	
	21.04.92	24.04.92	04	Comm. Leave	--do--	
	01.05.92	04.05.92	04	EL	Not feeling well	--do--
	05.05.92	30.06.92	57	EOL	Medical ground	
	01.07.92	30.07.92	30	EOL	--do--	
	04.08.92	07.08.92	04	HPL	Go to Delhi	
	08.08.92	09.08.92	02	HPL	Medical ground	

	10.08.92	08.10.92	60	EOL	--do--	
	02.11.92	03.11.92	02	HPL	Go to Delhi	
	12.11.92	26.11.92	15	HPL	--do--	
	27.11.92	--	01	HPL	--do--	
	01.12.92	03.12.92	03	HPL		
	29.12.92	--	01	EL	--	
	31.12.92	18.02.93	50	EOL	--	
Total				323 Days		
	19.02.93	04.03.93	14	EOL		
	10.03.93	--	01	HOL	--	
	11.03.93	12.03.93	02	EOL	--	
	05.03.93	--	01	EOL	--	
	13.04.93	18.05.93	36	EOL	Medical ground	MC/fitness submitted
	19.05.93	26.06.93	38	EOL	--	
	15.07.93	21.07.93	07	EL	Go to Delhi	
	22.07.93	31.07.93	10	EL	Medical ground	
	01.08.93	10.08.93	10	Comm. Leave	--do--	
	11.08.93	08.10.93	58	EOL	--do--	
	12.10.93	--	01	EL	Go to Delhi	
	16.10.93	30.11.93	46	EOL	--	
Total			234 days			
	01.12.93	Terminated from the services.				

[The above chart shows that in the year 1987 the petitioner remained on leave for 319 days, in the year 1988 she remained on leave for 331 days, in the year 1989 she remained on leave for 210 days, in the year 1990 she remained on leave for 236 days, in the year 1991 she remained on leave for 326 days, in the year 1992 she remained on leave for 323 days and in the year 1993 she remained on leave for 234 days.] Narrating the leave account in annexure CA-2 the respondents have alleged in the counter affidavit that in last 7 years the petitioner has rendered no purposeful service to the Corporation. In the year 1991 when the petitioner was posted in ONGC Hospital her behavior was also not good with her superiors and ultimately a letter dated 12.6.1991 was sent to Group General Manager by the Deputy Director of the Company (copy annexure CA-3 to the counter affidavit). It is admitted that the Board of Doctors was constituted for examining the variance between the

Medical Certificates and ailment alleged by the petitioner. The Board reported that in many of the certificates the leave was disproportionate to the nature of the ailment alleged by the petitioner. The petitioner again absented herself from 4th January to 14th January in the year 1994. Ultimately the notice was given to the petitioner and her services were terminated under Regulation 24 of ONGC (Terms and Conditions of Appointment and Services) Regulation, 1975. At the end of the counter affidavit it has been stated that the petitioner's reply was duly considered before passing the impugned order.

4. I heard learned counsel for the parties at length and also perused the affidavits filed by the parties along with annexures annexed thereto.

5. The question for consideration of this court in this writ petition is whether the termination of the services of the petitioner vide impugned order dated 1.7.1994 is illegal and whether the departmental appeal is wrongly decided against her.

6. From the perusal of the affidavits and copy of annexure 1 to the writ petition which is letter of appointment dated 12.5.1983 is is undisputed fact that the petitioner was appointed as Assistant Grade-III vide letter dated 12.5.1983. The terms of the appointment as mentioned in appointment letter at Sl. 2 (i), (ii) and (vi) are reproduced below:-

“i) The post is temporary.”

“ii) The appointment may be terminated at any time by one month's notice to be given by either side viz. the appointee or the appointing authority, without assigning any reasons. The appointing authority, however, reserves the right of terminating the services of the appointee without notice or before expiration of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.”

“vi) Other conditions of service will be governed by the relevant rules, regulations and orders in force from time to time.”

7. Before proceeding further it is necessary to see the order of promotion by which the petitioner was promoted from Assistant Graded-III to Assistant Grade-II, i.e. office order dated 6.1.90 (copy annexure 2 to the writ petition). The condition no. 3 and 5 mentioned in the said letter of promotion dated 6.1.90 are quoted below:-

“3. She will be on probation for a period of one year from the date of assumption of charge of the post of A.G. II. Her continuance as A.G. II will depend upon the satisfactory performance of her duties. The competent authority also reserves to itself the right to extend the period of probation at its discretion.”

“5. Other terms and conditions of her appointment shall remain unchanged.”

It is also pertinent to mention here that the perusal of the letter of promotion was issued on behalf of the Group General Manager (Personnel) and signed by the Deputy Director (P & A). The first point pressed on behalf of the petitioner is that the person who has issued letter of termination is below in the rank to the person on whose behalf the order dated 12.1.90 of promotion was issued. The letter of initial appointment was issued on behalf of the Director of ONGE (copy annexure 1 to the writ petition) shows that the petitioner was appointed vide letter-dated 12.5.1983. And the perusal of annexure 2 shows that the letter (copy annexure-2 to the writ petition) was signed by the Deputy Director (P & A) for Group General Manager (Personnel). The copy of termination order dated 1.7.1994 is signed by the General Manager (Administration). Now we have to see if the General Manager (Administration) is below in rank than the person who has issued the appointment letter. None of the above letters are signed by the Group General Manager. Rather

the General manager (Administration) has signed the letter of termination, which is dated 1.7.1994. As such it is difficult to say if the officer the services is below in rank to the petitioners who has issued the letter of initial appointment or the promotional order to the petitioner. And on the record it can not be said to have been established if the order was passed by person below in rank to the appointing authority particularly when “being appointing authority” clearly mentioned in the impugned order of termination.

8. Shri V.K. Goel, learned for the petitioner has argued that the petitioner was not a temporary employee as such her services could not have been terminated by giving one month's notice or one month salary in lieu thereof. Though the petitioner has alleged in the writ petition that she was confirmed employee but no document was shown to this court if the petitioner was a permanent employee or if she was confirmed. As against this, the fact has been categorically denied by the respondents in their counter affidavit. Learned counsel for the petitioner drew my attention to principle of law laid down in *Uptron India Ltd. Vs. Shammi Bhan* 1998 SCC (L&S) 1601 and submitted that the services of the permanent employee could not be terminated abruptly. In my opinion the above case law is of no help to the petitioner as she failed to show if she was a confirmed employee. As against this the principle of law laid down in *State of U.P. Vs. Rajendra Kumar Singh* (1997) 10 Supreme Court Cases 682 shows that merely on completion of probation period one can not be treated to have been confirmed. Similarly in the *State of U.P. Vs. Kaushal Kishore Shukla* (1991) 1 Supreme Court Cases 691 it has been held that the temporary government servant has no right to hold the post. In the said case it is further stated that if the services of the temporary government servant is terminated in accordance with terms and conditions of service, it will not visit him with evil consequences. I have already quoted above the terms and conditions contained in the initial appointment letter and the condition no. 5 contained in promotional order.

9. Learned counsel for the petitioner contended that though the impugned order of termination is apparently simplicitor but in fact the petitioner has been removed for the reasons that she has allegedly availed the leaves disproportionate to her ailment. As such the impugned order is penal in nature. In support of this contention reliance has been placed on the principle of law laid down in Babu Lal Vs. State of Haryana AIR 1991 Supreme Court 1310 by the petitioner. In the said case it is laid down that even if the order is innocuous on the face of it, the Court, if necessary, for the ends of fairplay and justice can lift the veil and find out the real nature of the order. After going through the impugned order and alleged service record of the petitioner it is not a case of misconduct but that office unsatisfactory service on the part of the petitioner due to which the respondents have no option but to terminate the services of the petitioner without assigning any reason. The chart (annexue CA-2) as mentioned earlier clearly discloses the problems of the petitioner with the respondents organization regarding her services rendered by her. She has availed the leaves during her service carrier as under:-

<u>Year</u>	<u>Leave Aailed</u>
1987	319
1988	332
1989	210
1990	236
1991	326
1992	337
1993	220 (till 30.11.1993).

With the above performance no employer can afford to retain its employee. The petitioner admittedly remained absent as in chart from all days mentioned year after year of one ground or the other. As such the impugned order which is simplicitor termination order can not be said to be a penal in nature casting stigma on the petitioner as no reasons has been assigned in the order. The Regulation 24 (1)

empowers the respondents to terminate the services of the petitioner in the manner it has been done.

10. Lastly on behalf of the petitioner my attention is drawn to the principle of law laid down in Union of India Vs. Giri Raj Sharma AIR 1994 SC 215 and it was argued that for over staying of leave, ones service can not be terminated. In the said referred case the over staying of leave was only 12 days while in the present case the petitioner is continuously absented herself year after year and her case can not be equated with that of the case referred.

11. In view of the above discussions and the conduct of the petitioner as shown above it is not a fit case in which the court should be inclined to show discretion in favour of the petitioner under Article 226 of the Constitution of India. Accordingly, the writ petition is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt/- 26.8.2004
P. Bandhavakar